

# SUPREME COURT OF THE UNITED STATES.

No. 257.—OCTOBER TERM, 1920.

The State of Wyoming, et al.	}	Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.
Appellants,		
vs.		
The United States.		

[March 28, 1921.]

Mr. Justice VAN DEVANTER delivered the opinion of the Court.

This is a suit by the United States to establish title in it to eighty acres of land and to the proceeds of oil taken therefrom. The District Court rendered a decree dismissing the bill on the merits, which the Circuit Court of Appeals reversed, 262 Fed. Rep. 675, and the defendants bring the case here.

One of the defendants, the State of Wyoming,\* claims under a lien selection, made in 1912, and the other defendants under a lease from the State, made in 1916. It is against the selection and the lease that the United States seeks to establish title.

By the act of July 10, 1890, c. 664, § 4, 26 Stat. 222, Congress granted to the State for the support of common schools certain lands in place (sections 16 and 36 in each township), with exceptions not material here; and by the act of February 28, 1891, c. 364, 26 Stat. 796, amending §§ 2275, 2276, Rev. Stat., the State was invited and entitled, in the event any of the designated lands in place after passing under the school grant should be included within a public reservation, to waive its right thereto and select in lieu thereof other lands of equal acreage from unappropriated non-mineral public lands outside the reservation and within the State. See *California v. Desert Water, etc. Co.*, 243 U. S. 415; *Payne v. New Mexico*, ante, p. —. Other laws of general application, §§ 441, 453, 2478, Rev. Stat., required that the

\*The State was not made a party at first, but afterwards at its own request was admitted as a defendant to enable it to defend the lien selection.

selections be made under the direction of the Secretary of the Interior.

In 1907 a tract in place which had passed to the State under the school grant was included within a public reservation, called the Big Horn National Forest. On April 4, 1912, the State—through its Governor, Joseph M. Carey, and its Land Commissioner, S. G. Hopkins—filed in the proper local land office a selection list waiving its right to that tract and selecting in lieu thereof other land of the same area from public lands within the State and outside the forest reserve. The land so selected included the eighty acres now in controversy. At that time the State had a perfect title to the tract in the reserve and the land selected in lieu thereof was vacant, unappropriated, and neither known nor believed to be mineral. The list fully conformed to the directions on the subject issued by the Secretary of the Interior and was accompanied by the requisite proofs and the proper fees. Notice of the selection was regularly posted and published, proof thereof was duly made and the State paid the publisher's charge. Thus, as the Circuit Court of Appeals said, "the State did everything necessary to show a perfect title to the land relinquished and perfect relinquishment thereof to the government, and everything that was required either by statute or regulation of the Land Department" in selecting the lieu land instead of the relinquished tract.

No objection was called forth by the notice and in regular course the local officers transmitted the list and other papers to the General Land Office with a certificate stating that no adverse filing, entry or claim to the selected land was shown by the records in their office and that the filing of the list was allowed and approved by them. The list remained in the General Land Office awaiting consideration by the Commissioner for upwards of three years. In the meantime, on May 6, 1914, two years after the selection, the selected land, with other lands aggregating more than 88,000 acres, was included in a temporary executive withdrawal as possible oil land under the act of June 25, 1910, c. 421, 36 Stat. 847. On April 29, 1915, the Commissioner, coming to consider the selection, declined to approve it as made and called on the State either to accept a limited—surface right—certification of the selected land or to show that it still was not known or believed to be mineral. The State declined to accede to either alternative and insisted that

its rights should be determined as of the time when the waiver and selection were made and that, applying that test, it became invested with the equitable title to the selected land two years prior to the temporary withdrawal and at a time when that land plainly was neither known nor believed to be mineral. The Commissioner thereupon ordered the selection canceled,—not because it was in any respect objectionable when made, but on the theory that he was justified in rejecting it by reason of the subsequent withdrawal and subsequent oil discoveries in that vicinity. The State appealed to the Secretary of the Interior, and, on October 25, 1916, he affirmed the Commissioner's action.

In the meantime, on May 24, 1916, the State had given to the defendant Ridgely a lease permitting him to drill the selected land for oil, and the lease had been assigned to the defendant oil company. There was no oil discovery, nor any drilling, on the selected land up to the time the lease was given; but thereafter the oil company began drilling and at large cost carried the same to discovery and successful production. This was four years after the selection.

The question presented is whether, considering that the selection was lawfully made in lieu of the state-owned tract contemporaneously relinquished, and that nothing remained to be done by the State to perfect the selection, it was admissible for the Commissioner and the Secretary to disapprove and reject it on the ground that the selected land was withdrawn two years later under the act of June 25, 1910, and still later was discovered to be mineral land, that is, to be valuable for oil. Or, putting it in another way, the question is whether it was admissible for those officers to test the validity of the selection by the changed conditions when they came to examine it, instead of by the conditions existing when the State relinquished the tract in the forest reserve and selected the other in its stead.

In principle it is plain that the validity of the selection should be determined as of the time when it was made, that is, according to the conditions then existing. The proposal for the exchange of land without for land within the reserve came from Congress. Acceptance rested with the State and of course would be influenced and controlled by the conditions existing at the time. It is not as if the selection was merely a proposal by the State which the land

officers could accept or reject. They had no such option to exercise, but were charged with the duty of ascertaining whether the State's waiver and selection met the requirements of the congressional proposal and of giving or withholding their approval accordingly. The power confided to them was not that of granting or denying a privilege to the State, but of determining whether an existing privilege conferred by Congress had been lawfully exercised;—in other words, their action was to be judicial in its nature and directed to an ascertainment and declaration of the effect of the waiver and selection by the State in 1912. If these were valid then—if they met all the requirements of the congressional proposal, including the directions given by the Secretary—they remained valid notwithstanding the subsequent change in conditions. Acceptance of such a proposal and full compliance therewith confer vested rights which all must respect. Equity then regards the State as the owner of the selected tract and the United States as owning the other; and this equitable ownership carries with it whatever of advantage or disadvantage may arise from a subsequent change in conditions whether one tract or the other be affected. Of course the State's right under the selection was precisely the same as if in 1912 it had made a cash entry of the selected land under an applicable statute, for the waiver of its right to the tract in the forest reserve was the equivalent of a cash consideration. And yet it hardly would be suggested that the Commissioner or the Secretary on coming to consider the cash entry could do otherwise than approve it, if at the time it was made the land was open to such an entry and the amount paid was the lawful price.

The conclusion which we deem plain in principle is fully sustained by prior adjudications. In *Benson Mining Co. v. Alta Mining Co.*, 145 U. S. 428, which presented the question of when under the public land laws a right to the land becomes vested, it was said, p. 431: "When the price is paid the right to a patent immediately arises. If not issued at once, it is because the magnitude of the business in the Land Department causes delay. But such delay, in the mere administration of affairs, does not diminish the rights flowing from the purchase, or cast any additional burdens on the purchaser, or expose him to the assaults of third parties." And again, p. 432: "It is a general rule, in respect to the sales

of real estate, that when a purchaser has paid the full purchase price his equitable rights are complete, and there is nothing left in the vendor but the naked legal title, which he holds in trust for the purchaser. And this general rule of real estate law has been repeatedly applied by this court to the administration of the affairs of the Land Department of the government; and the ruling has been uniform, that whenever, in cash sales, the price has been paid, or, in other cases, all the conditions of entry performed, the full equitable title has passed, and only the naked legal title remains in the government in trust for the other party, in whom are vested all the rights and obligations of ownership." In *Colorado Coal and Iron Co. v. United States*, 123 U. S. 307, a title obtained through preëmption cash entries was assailed on the ground that the land was shown by subsequent discoveries to be mineral; but the attack failed, the court saying, p. 328: "A change in the conditions occurring subsequently to the sale, whereby new discoveries are made, or by means whereof it may become profitable to work the veins as mines, cannot affect the title as it passed at the time of sale. The question must be determined according to the facts in existence at the time of the sale." In *United States v. Iron Silver Mining Co.*, 128 U. S. 673, a title acquired through an application for a placer patent was sought to be annulled on the ground that subsequent mining disclosed that the land was lode land; but the title was sustained, the court observing, p. 683: "The subsequent discovery of lodes upon the ground, and their successful working, does not affect the good faith of the application. That must be determined by what was known to exist at the time." Particularly in point is *Shaw v. Kellogg*, 170 U. S. 312, which related to what is called Baca Tract No. 4. Congress had accorded to the heirs of Luis Maria Baca the right to relinquish their claim to a large body of land in New Mexico and to select instead "an equal quantity of vacant land, not mineral," in not exceeding five tracts in that Territory. As here, there was no provision for a patent. The original claim was relinquished and the lieu selection made conformably to directions given by the Land Department, the selected land being represented as vacant and not known to be mineral. Afterwards the selection of a part of Tract No. 4 was called in question on the ground that it was shown by subsequent discoveries to be mineral. This court sustained the

selection and said, p. 332: "The grantees, the Baca heirs, were authorized to select this body of land. They were not at liberty to select lands already occupied by others. The lands must be vacant. Nor were they at liberty to select lands which were then known to contain mineral. Congress did not intend to grant any mines or mineral lands, but with these exceptions their right of selection was coextensive with the limits of New Mexico. We say 'lands then known to contain mineral,' for it cannot be that Congress intended that the grant should be rendered nugatory by any future discoveries of mineral. The selection was to be made within three years. The title was then to pass, and it would be an insult to the good faith of Congress to suppose that it did not intend that the title when it passed should pass absolutely, and not contingently upon subsequent discoveries. This is in accord with the general rule as to the transfer of title to the public lands of the United States. In cases of homestead, preëmption or townsite entries, the law excludes mineral lands, but it was never doubted that the title once passed was free from all conditions of subsequent discoveries of mineral." In *Leonard v. Lennox*, 181 Fed. 760, a contention that an application for a non-mineral final entry, even if regularly presented and based on full compliance with the law, should be disallowed and rejected where the land subsequently is discovered to be mineral (coal) was overruled by the Circuit Court of Appeals of the Eighth Circuit, the court saying, p. 764: "This insistence cannot prevail. It not only is opposed to the settled rule that the character of the land—whether agricultural or known to be chiefly valuable for coal—must be determined according to the conditions existing at the time when the applicant does all that he is required to do to entitle him to a patent, but is grounded in a misapprehension of the authority and duty of the officers of the Land Department in respect of such an application. Whilst it undoubtedly is subject to examination and consideration by them, this is not that they may elect whether or not they will consent to its allowance, but that they may ascertain whether or not the applicant has acquired a right to its allowance—a right which is acquired, if acquired at all, at that point of time when the applicant has done all that he is required to do in the premises instead of at the time of its recognition by them." The last expression on this subject in this court is found in *Payne v. New Mexico*,

*ante*, p. —, where it was held in respect of a state lieu selection like the one in question here that the Commissioner and the Secretary in acting thereon are required to give effect to the conditions existing when it was made, that if it was valid then they are not at liberty to disapprove or cancel it by reason of a subsequent change in conditions and that in this regard the statute under which the selection was made does not differ from other land laws offering a conveyance of the title to those who accept and fully comply with their terms.

The Land Department uniformly has ruled that the States acquire a vested right in all school sections in place which are not otherwise appropriated, and not known to be mineral, at the time they are identified by the survey,—or at the date of the grant where the survey precedes it,—regardless of when the matter becomes a subject of inquiry and decision, and that this right is not defeated or affected by a subsequent mineral discovery. *California v. Poley*, 4 Copp's L. O. 18; *Abraham L. Minor*, 9 L. D. 408; *Rice v. California*, 24 L. D. 14; *United States v. Morrison*, 240 U. S. 192, 207; *United States v. Sweet*, 245 U. S. 563, 572. And as respects cash entries and entries under the preëmption, homestead, desert land and kindred laws the Land Department always has ruled that if, when the claimant has done all that he is required to do to entitle him to receive the title, the land is not known to be mineral he acquires a vested right which no subsequent discovery of mineral will divest or disturb. *Harnish v. Wallace*, 13 L. D. 108; *Rea v. Stephenson*, 15 L. D. 37; *Reid v. Lavellee*, 26 L. D. 100, 102; *Aspen Consolidated Mining Co. v. Williams*, 27 L. D. 1, 17; *Diamond Coal and Coke Co. v. United States*, 233 U. S. 236, 240. And this rule has been applied by that department, although not uniformly, to selections made in lieu of relinquished lands in public reservations. Thus in *Kern Oil Co. v. Clarke*, 30 L. D. 550, where a lieu selection under the act of June 4, 1897, c. 2, 30 Stat. 36, was under consideration, the Secretary of the Interior said, p. 556: "When do rights under the selection become vested? In the disposition of the public lands of the United States, under the laws relating thereto, it is settled law: (1) That when a party has complied with all the terms and conditions necessary to the securing of title to a particular tract of land, he acquires a vested interest therein, is regarded as the equitable owner thereof, and thereafter

the government holds the legal title in trust for him; (2) that the right to a patent once vested, is, for most purposes, equivalent to a patent issued, and when in fact issued, the patent relates back to the time when the right to it became fixed; and (3) that the conditions with respect to the state or character of the land, as they exist at the time when all the necessary requirements have been complied with by a person seeking title, determine the question whether the land is subject to sale or other disposal, and no change in such conditions, subsequently occurring can impair or in any manner affect his rights." Again, p. 560: "These established principles, in the opinion of the Department, are applicable to selections under the act of June 4, 1897. The act clearly contemplates an exchange of equivalents. Such is the unmistakable import of its terms. In the case of the relinquishment of patented lands title is to be given by the government for title received." And again, p. 564: "It would be strange indeed, if by the latter [1897] act, Congress intended that one who, accepting the government's offer of exchange, relinquishes a tract to which he has obtained full title in a forest reservation, and in lieu thereof selects a tract of land which at the time is vacant and open to settlement, and does all that is required of him to complete the selection and to perfect the exchange, should thereby acquire only an inchoate right to the selected tract, liable to be defeated by subsequent discoveries of mineral at any time before patent, or before final action upon the selection by the land department. Such a construction would not only tend to defeat the objects for which the act was passed, by discouraging owners of lands in forest reservations from giving up their titles, but would be against both the letter and spirit of the act. Parties would be slow indeed to relinquish their complete titles if it were once understood that they could obtain only doubtful or contingent rights in return for them. It could not have been the intention of Congress that parties accepting the government's offer of exchange should be embarrassed by any such conditions of doubt and uncertainty."

That view was repeated and applied in many other departmental decisions dealing with lieu selections. But afterwards the Secretary, conceiving that the decisions of this court in *Wisconsin Central R. R. Co. v. Price County*, 133 U. S. 496, and *Cosmos Exploration Co. v. Gray Eagle Oil Co.*, 190 U. S. 301, justified him in so

doing, ruled that no right attached under such a selection unless and until it was approved by him and therefore that, even though the selection was lawfully made, he possessed a discretion to reject it and give effect to an intervening change in conditions, as where a new claimant settled upon the land or sought to make entry of it while the selection was pending.

Under this changed ruling the Secretary rejected several selections lawfully made by one Daniels and awarded and patented the land to others. Daniels then brought suits against the patentees charging that by the selections he acquired the equitable title, that his selections were rejected and the patents issued through a misapprehension of the law, and therefore that the patentees took the legal title in trust for him. Ultimately the suits came to this court, and after a full review the changed ruling of the Secretary was disapproved and Daniels' contention sustained. *Daniels v. Wagner*, 237 U. S. 547. The substance of the decision was that as the selections were lawful when made "it was the plain duty" of the Secretary to approve them; that the contrary view found no justification in *Cosmos Exploration Co. v. Gray Eagle Oil Co.*, *supra*; and that the real authority and duty of the Secretary in dealing with such selections were pointed out in *Weyerhaeuser v. Hoyt*, 219 U. S. 380, 387-388, where it was said: "The requirement of approval by the Secretary consequently imposed on that official the duty of determining whether the selections were lawful at the time they were made, which is inconsistent with the theory that any one could appropriate the selected land pending action of the Secretary. The scope of the power to approve lists of selections conferred on the Secretary was clearly pointed out in *Wisconsin Central Railroad v. Price*, 133 U. S. 496, 511, where it was said that the power to approve was judicial in its nature. Possessing that attribute the authority therefore involved not only the power but implied the duty to determine the lawfulness of the selections as of the time when the exertion of the authority was invoked by the lawful filing of the list of selections."

As the Circuit Court of Appeals in the present case, like the Secretary in the other, regarded the decisions in the *Wisconsin Central* case and the *Cosmos* case as showing that no right attaches under a lieu selection unless and until approved by the Secretary, it is well to point out just what was involved in those cases; for

it then will be apparent that there was no purpose in either to go to the length suggested.

The *Wisconsin Central* case was a suit to enjoin the collection of a tax levied on land which at the time was covered by a pending indemnity selection under a railroad land grant. The Commissioner of the General Land Office had reported that the company already had received indemnity lands largely in excess of the losses for which it was entitled to indemnity, and the company was disputing that report. Until that controversy was determined it could not be known whether the company was entitled to an approval of the selection. In that situation the United States had such an interest in the land as made it non-taxable. Whether the selection was valid or otherwise was primarily a question for the Secretary of the Interior to determine. Ultimately he held it valid, but not until after the tax was levied—indeed, after the suit was brought. The suit involved the validity of the tax, and nothing more. Its purpose was not to control the action of the Secretary by a writ of mandamus or injunction, nor to determine the title as between the United States and the company or between the company and a grantee of the United States. True, the court, after commenting on the difference between the granted lands in place and the indemnity lands as respects the mode of identification, very broadly stated that an indemnity selection to be effective required the approval of the Secretary; but it was not meant by this that the Secretary arbitrarily could defeat the right of selection by withholding his approval, nor that if through a mistake of law he rejected a selection which was valid at the time it was made the company would be remediless. There was no occasion to consider those questions, nor could they properly be determined without the presence of parties not then before the court. And that the court did not intend its words to be taken so broadly is illustrated by the fact that it cited with approval the case of *Saint Paul and Sioux City R. R. Co. v. Winona and Saint Peter R. R. Co.*, 112 U. S. 720, 733, wherein an indemnity selection lawfully made, but disapproved by the Secretary, was sustained against an adverse certification on the ground that "this erroneous decision of his" did not deprive the selector "of rights which became vested by its selection of those lands."

The *Cosmos* case was a suit by a lieu land selector to establish his title as against others who were claiming under placer mining locations. The selection was not accompanied by proof that the land was not then occupied adversely, although that was required. Within the time prescribed by the regulations the mining claimants filed in the land office verified protests assailing the regularity and validity of the selection, setting up locations of the selected land made under the placer mining law prior to the selection and alleging that the lands "were not subject to selection" because "the same was mineral land and was included within" the mining locations. The protests were entertained and, with the selection, were pending when the suit was begun, which was shortly after the protests were filed. The suit was brought on the theory that by the selection the selector acquired "the full, complete and equitable title" to the selected land, notwithstanding he had not submitted any proof of non-occupancy, and that the protests were not such as could be entertained or investigated by the Land Department. That case and another (*Riverside Oil Co. v. Hitchcock*, 190 U. S. 316), wherein a writ of mandamus was sought against the Secretary by another lieu land selector, were heard and disposed of as related cases, and the decision in one should be read in connection with that in the other. The full substance of the decision in the *Cosmos* case is in the following excerpt from the opinion, 190 U. S. 315: "Concluding, as we do, that the question whether the complainant has ever made a proper selection of land in lieu of the land relinquished, has never been decided by the Land Department, but is still properly before that department, the courts cannot take jurisdiction and proceed to decide such question themselves. The Government has provided a special tribunal for the decision of such a question arising out of the administration of its public land laws, and that jurisdiction cannot be taken away from it by the courts. *United States v. Schurz*, 102 U. S. 378, 395. The bill is not based upon any alleged power of the court to prevent the taking out of mineral from the land, pending the decision of the Land Department upon the rights of the complainant, and the court has not been asked by any averments in the bill or in the prayer for relief to consider that question. For the reasons stated, we think the bill does not state sufficient facts upon which to base the relief asked for, and that the defendants' demurrer to the same was

properly sustained." There are general expressions in the opinion, which separated from the rest, might be taken as declaring that no right vests under a lieu selection unless the Secretary approves it; but that such a ruling was intended is refuted by the opinion as a whole, and particularly by the statements therein that the power of the Secretary is not to be exercised arbitrarily and that his "decision of any legal question would not, of course, be binding on the courts" should the question properly arise in future litigation. The general expressions were relied upon in *Daniels v. Wagner* as interpretative of the decision and this court answered, "But we are of opinion that this interpretation of the *Cosmos* case cannot be justified." Besides, it was adjudged in the *Daniels* case that a lieu selection which is lawful at the time it is made does invest the selector with equitable rights which he may enforce in an appropriate way where the Secretary through an error of law rejects the selection. And that ruling was reaffirmed and applied in *Payne v. Central Pacific Ry. Co.*, ante, p. —, and *Payne v. New Mexico*, ante, p. —.

The only exception to the general rule before stated respecting the time as of which the character of the land—whether mineral or non-mineral—is to be determined is one which in principle and practice is confined to railroad land grants. From the beginning the Land Department, by reason of the terms of those grants and the restrictive interpretation to which they are subjected, uniformly has construed and treated them as requiring that the character of the land be determined as of the time when the patent issues. In 1890 Secretary Noble, in declining to disturb this construction and practice, pointed out the reasons which had led the Department to make a distinction in this regard between those grants and other land laws, and said: "This practice, having been uniformly followed and generally accepted for so long a time, there should be, in my judgment, the clearest evidence of error, as well as the strongest reasons of policy and justice controlling, before a departure from it should be sanctioned. It has, in effect, become a rule of property." *Central Pacific R. R. Co. v. Valentine*, 11 L. D. 238, 246. In 1893 the matter came before this court and the construction and practice of the Land Department were sustained. *Barden v. Northern Pacific R. R. Co.*, 154 U. S. 288. As the opinion in that case shows, the court recognized that the mineral

land exception in other land laws simply operates to exclude from sale, etc., "land known at the time to be mineral," and was careful to explain that its decision related to "grants in aid of railroads" and to "no other grants." The grounds on which the decision was put were, (a) that the railroad land grants, besides being confined in the granting clause to lands "not mineral," contain provisos declaring in words or effect "that all mineral lands be, and the same hereby are, excluded from the operation of this" grant; (b) that such grants, although expressly requiring that the question whether the lands are otherwise excepted be determined as of the time the map of definite location is filed, contain no such provision in respect of the exception of mineral land; (c) that it was well understood that many years would necessarily elapse between the filing of the map and the time when by construction of the road the grantee would be entitled to patents, and as the grants covered great areas, in one instance nearly equal to that of Ohio and New York, it hardly could have been intended to arrest mineral development in those areas in the meantime; (d) that such grants "must be strictly construed," and "if they admit of different meanings, one of extension and one of limitation, they must be accepted in a sense favorable to the grantor;" and (e) that the long prevailing construction and practice of the Land Department ought not to be disturbed. Plainly the decision in that case is without bearing here, save as it recognizes that rights under other land laws are to be tested by a different rule. And this is emphasized by the fact that in *Shaw v. Kellogg*, *supra*, where the selection of Baca Tract No. 4 was involved, the court distinguished the *Barden* case, and applied the general rule before stated. And it is of further significance that this court has recognized that the legislation of Congress designed to aid the common schools of the States is to be construed liberally rather than restrictively. *Beecher v. Wetherby*, 95 U. S. 517, 526; *Johanson v. Washington*, 190 U. S. 179, 183.

Of the executive withdrawal of the land two years after the lieu selection was lawfully made, it suffices to say, following the recent decision in *Payne v. Central Pacific Ry. Co.*, *ante*, p—, that the act of 1910, under which the withdrawal was made, is confined to "public lands," that by the selection this land had ceased to be

public, and that the act could not be construed to embrace it without working an inadmissible interference with vested rights.

It results that the Secretary erred in matter of law in rejecting the selection and that the District Court rightly entered a decree for the defendants. See *Cornelius v. Kessel*, 128 U. S. 456, 461; *United States v. Detroit Timber Co.*, 200 U. S. 321, 338. The decree of the Circuit Court of Appeals is accordingly

*Reversed.*

A true copy.

Test:

*Clerk Supreme Court, U. S.*

